

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SEAPORT LOAN PRODUCTS, LLC and ALDWYCH
CAPITAL PARTNERS, LLC,

Plaintiffs,

-against-

LOWER BRULE COMMUNITY DEVELOPMENT
ENTERPRISE, LLC,

Defendant.

Index No.

Date purchased:

COUNTY OF NEW YORK as the place
of trial.

The basis of the venue is CPLR § 503.

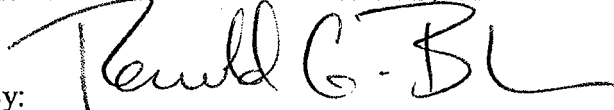
SUMMONS

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
May 2, 2012

MANATT PHELPS & PHILLIPS, LLP

By: 

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Nirav S. Shah

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Attorneys for Plaintiff
Seaport Loan Products, LLC

-and-

PORZIO, BROMBERG & NEWMAN, P.C.

By: 

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Attorneys for Plaintiff

Aldwych Capital Partners, LLC

Defendant's name and address:

Lower Brule Community Development Enterprise LLC
25 Robert Pitt Drive, Suite 204
Monsey, NY 10952

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COMPLAINT

Plaintiffs Seaport Loan Products, LLC (“Seaport”), by its attorneys, Manatt Phelps & Phillips, LLP, and Aldwych Capital Partners, LLC (“ACP,” together with Seaport, “Plaintiffs”), by its attorneys, Porzio Bromberg & Newman P.C., complaining in this action against Defendant Lower Brule Community Development Enterprise LLC (“Defendant” or “Lower Brule”), allege as follows:

NATURE OF THE ACTION

1. This action arises from Defendant’s breach of a written agreement to sell to Seaport a 90% interest in a loan of approximately \$22.5 million made by Defendant to a third-party. After Defendant signed a binding contract to sell the interest to Seaport, Defendant refused to honor the agreement because it found a buyer willing to pay a higher price. ACP was an intended beneficiary under Defendant’s agreement with Seaport, in that ACP had the right to share with Seaport the fees and profits from the transaction when Seaport sold the loan. Based upon Defendant’s breach, Seaport and ACP seek compensatory damages of more than \$1 million, plus 9% interest and costs.

THE PARTIES

2. Seaport is a limited liability company organized under the laws of the state of Delaware with its principal place of business in New York, New York. It has one member, The Seaport Group LLC, a Delaware limited liability company. Among other things, Seaport buys and sells loans. Seaport has purchased, sold and brokered the sale of numerous loans.

3. Plaintiff ACP is a limited liability company organized under the laws of the state of Delaware with its principal place of business in New York, New York. It has one member; James Avery, a resident of New York, New York. Among other things, ACP provides investment advisory services to institutions seeking to raise capital.

4. Upon information and belief, Defendant Lower Brule is a limited liability company organized under the laws of the state of Delaware. Upon information and belief, it has one member; Lower Brule Sioux Tribe, a federally recognized Indian Tribe residing in the Lower Brule Reservation, South Dakota. Upon information and belief, Defendant is in the business of providing community development financial services.

The Parties' Agreement to Sell the Loan

5. Defendant is the lender, and LBC Western Holdings, LLC is the borrower, under a loan agreement and a negotiable promissory note dated October 29, 2010 in the principal amount of \$22,519,638.00 (the "Loan").

6. The United States Department of the Interior (the "Department") entered into a loan guaranty certificate (No. G103D1S1501) with Defendant to guarantee 90% of the principal amount and interest of the Loan (the "Guaranteed Portion"). The Guaranteed Portion of the Loan equals \$20,267,674.00.

7. In an attempt to sell the Loan in or around the autumn of 2011, Defendant entered into an agreement with Eagle Private Equity, LLC (“Eagle”) to seek buyers of the Loan.

8. On September 13, 2011, Eagle entered into a written agreement with ACP to market the Loan and to introduce buyers to Eagle and Defendant.

9. ACP, in turn, entered into an agreement with Seaport to assist in finding a potential buyer of the Loan. Pursuant to the agreement, upon the Loan’s transfer to a third-party, ACP and Seaport were to share the difference between the price paid by a third-party and the proceeds paid to Defendant.

10. ACP was disclosed to Defendant as a direct beneficiary of any transaction involving the agreement between Defendant and Seaport, and ACP worked directly with Defendant to sell the Loan.

11. In or around September 2011, Seaport, in reliance on its agreement with ACP, located a buyer who was interested in purchasing the Guaranteed Portion. That buyer was Farm Credit Services of America, PCA (“Farm Credit”).

12. Over the next several months, Seaport, ACP and Farm Credit conducted extensive due diligence with respect to the Loan and the Guaranteed Portion. Defendant and Eagle communicated and exchanged information directly with Seaport, ACP and Farm Credit. Defendant continued to contact Seaport and ACP concerning the loan by telephone and email through, and as recently as, April 2012.

13. Defendant and Seaport reached agreement that Defendant would sell the Guaranteed Portion to Seaport, and Seaport would contemporaneously sell the Guaranteed Portion to Farm Credit. As compensation for locating Farm Credit, Seaport was to receive the

difference between the amount that Seaport paid Defendant and the amount paid by Farm Credit, which was to be shared by Seaport and ACP.

14. Seaport and Defendant memorialized the material terms of their agreement in a trade confirmation dated January 20, 2012 (the "Trade Confirmation"). A copy of the executed Trade Confirmation is attached hereto as Exhibit A.

15. Pursuant to the Trade Confirmation, Defendant agreed to sell to Seaport a participation interest in 100% of the Guaranteed Portion at a purchase price equal to 95% of the Guaranteed Portion, a total purchase amount of \$19,254,290.30.

16. Pursuant to the Trade Confirmation, the parties expressly agreed to use their best efforts to close or "settle in 5-10 business days after January 26, 2012." (Trade Confirmation, Ex. A, p. 2.)

17. Seaport at all times diligently and faithfully worked to settle the trade. Seaport never did or said anything to suggest that it would not meet its obligations.

18. ACP was aware of the Trade Confirmation and acted as an intermediary to facilitate the negotiations and best efforts requirement between Seaport and Defendant so as to expeditiously close the transaction within the time frame stated in the Trade Confirmation.

19. In reliance upon the Trade Confirmation, Seaport, ACP and Defendant prepared and reviewed mutually acceptable transfer documents.

20. Moreover, in or around January 2012, Defendant, Farm Credit and the Department prepared a side letter. That side letter addressed the Department's obligations under the Guaranty and the assignment of those obligations to Farm Credit.

21. Farm Credit requested additional assurances by government officials at the Department regarding the Department's authority to enter into the transaction, which required additional discussions before the parties could sign the side-letter agreement.

22. By March 2012, the Department met this request by offering to provide written assurances from its highest-level officials.

Defendant's Breach Of The Agreement And Sale To GAI

23. Although Defendant signed the Trade Confirmation on or about January 26, 2012 and agreed to use its best efforts to close with Seaport within 5-10 business days, unbeknownst to Plaintiffs, Defendant also was working secretly to sell the same loan interest to another buyer.

24. On or about April 2, 2012, Defendant announced to Plaintiffs that it had sold the entire Loan to a third-party—Great American Insurance Group (“GAI”)—and that the proposed transaction under the Trade Confirmation was “dead.” Before that time, Defendant never suggested that it did not intend to honor its obligations under the Trade Confirmation.

25. Meanwhile, with the support of Farm Credit and Eagle, Plaintiffs were ready to settle the transaction.

26. Upon information and belief, Defendant sold the entire Loan to GAI rather than to Seaport because GAI agreed to pay Defendant a higher price.

27. Upon information and belief, Defendant had been negotiating secretly with GAI for the sale of the entire Loan as early as December 2011, and continued negotiating with GAI during the period in which it promised to use its “best efforts” to settle the transaction with Seaport.

28. Upon information and belief, Defendant signed a different trade confirmation with GAI to sell the entire Loan on or around March 19, 2012, despite its commitment to sell the Guaranteed Portion of the Loan to Seaport pursuant to the Trade Confirmation.

29. Defendant failed to disclose the sale of the Loan to GAI until two weeks after it was sold. During that two-week period, Defendant continued to respond to Seaport's and ACP's questions and acted as if it was still proceeding towards a closing with Seaport. Meanwhile, Plaintiffs continued to work towards closing the transaction, expending significant time and money in the process.

AS AND FOR A FIRST CAUSE OF ACTION
(Seaport's Claim of Breach of Contract)

30. Plaintiffs repeat and reallege each allegation set forth above as if fully set forth herein.

31. Seaport and Defendant entered into a binding contract for the sale of the Guaranteed Portion to Seaport.

32. Seaport duly performed, and was at all times ready, willing and able to perform, its obligations under the Trade Confirmation.

33. Defendant materially breached the Trade Confirmation by selling the entire Loan to GAI on or around March 19, 2012 and attempting to unilaterally terminate the Trade Confirmation.

34. Defendant materially breached the "Best Efforts" provision in the Trade Confirmation and continued secretly to negotiate with GAI, including during the "5 to 10 business days after January 26, 2012."

35. Seaport at all times acted in good faith and dealt fairly with Defendant in its performance of its obligations under the Trade Confirmation.

36. Defendant acted in bad faith and dealt unfairly with Seaport in connection with closing the transaction, in that: (i) Defendant executed a trade confirmation with GAI to sell the entire Loan despite its ongoing obligation to sell the Guaranteed Portion to Seaport; (ii) Defendant continued to negotiate with GAI to sell the entire Loan to GAI after it signed Trade Confirmation with Seaport; (iii) Defendant failed to disclose its ongoing negotiations and discussions regarding the sale of the entire Loan to GAI before or after signing the Trade Confirmation; (iv) Defendant failed to disclose that it entered into a separate agreement with GAI to sell the Loan to GAI, thereby falsely inducing Plaintiffs to continue their performance under the Trade Confirmation; (v) Defendant made false and misleading statements regarding its intention to settle the transaction with Seaport; and (vi) Defendant abandoned the transaction with Seaport solely because it was able to get a higher price from GAI.

37. By its conduct, Defendant violated the implied covenant of good faith and fair dealing inherent in the Trade Confirmation between Seaport and Defendant, deprived Seaport of the benefit of its bargain, and prevented Seaport from carrying out its terms.

38. By reason of Defendant's breach, Seaport has been damaged in an amount to be determined at trial.

AS AND FOR A SECOND, ALTERNATIVE, CAUSE OF ACTION
(Defendant's Unjust Enrichment)

39. Plaintiffs repeat and reallege each allegation set forth above as if fully set forth herein.

40. By its bad faith and unfair dealing, Defendant has been unjustly enriched at the Plaintiffs' expense, in an amount to be determined at trial, but in no event less than the difference between the amount it received from GAI and amount Defendant would have received pursuant to the Trade Confirmation.

AS AND FOR A THIRD CAUSE OF ACTION
(ACP's Claim as Third-Party Beneficiary)

41. Plaintiffs repeat and reallege each allegation set forth above as if fully set forth herein.

42. ACP and Seaport entered into a binding contract to share the difference between the final sale price of the Loan to be paid by Farm Credit and the total proceeds agreed to be delivered to the Defendant.

43. ACP was disclosed to Defendant as a direct, intended beneficiary of the transaction involving Seaport and under the agreement between Seaport and Defendant.

44. By reason of Defendant's breach, ACP has been damaged in an amount to be determined at trial.

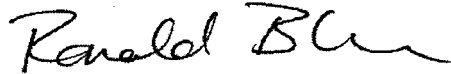
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment seeking the following relief:

- (a) On each cause of action, awarding Plaintiffs monetary damages in an amount to be determined at trial, but in no event less than \$1,073,383.70;
- (b) awarding Plaintiffs their costs and disbursements for this action;
- (c) awarding Plaintiffs pre-judgment interest of nine percent as set by statute; and
- (d) awarding such other and further relief as the Court may deem just and proper.

Dated: New York, New York.
May 2, 2012

MANATT PHELPS & PHILLIPS, LLP



By: _____

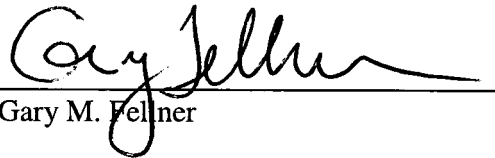
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